



POLICE DEPARTMENT

July 1, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Frank Bonacci  
Tax Registry No. 929747  
45 Precinct  
Disciplinary Case Nos. 2011-6008 & 2011-6109  
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The above-named member of the Department appeared before me on September 19, 2013 and January 27, 2014, charged with the following:

Disciplinary Case No. 2011-6008

1. Said Police Officer Frank Bonacci, while assigned to the 45<sup>th</sup> Precinct, on or about and between May 14, 2010 through July 4, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Police Officer on multiple occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of multiple summonses issued to various individuals.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT  
GENERAL REGULATIONS

Disciplinary Case No. 2011-6109

1. Said Police Officer Frank Bonacci, assigned to the 45<sup>th</sup> Precinct, on or about June 28, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer did install and display on his private vehicle, a 2005 Mercedes Benz C240, license plates which read, [REDACTED]

P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Guilty in Disciplinary Case No. 2011-6008 and testified in mitigation of the penalty. In Disciplinary Case No. 2011-6109, Respondent entered a plea of Not Guilty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

#### Disciplinary Case No. 2011-6008

Respondent, having pleaded Guilty, is found Guilty as charged.

#### Disciplinary Case No. 2011-6109

Respondent is found Guilty.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Deputy Inspector Russell Green as its sole witness.

#### Deputy Inspector Russell Green

Green is a 17-year member of the Department and he was assigned to the 45 Precinct as the Commanding Officer, located in Bronx County. He testified that officers from the 45 Precinct were permitted to park in a two to three block radius around the precinct. The precinct is situated in a residential neighborhood. He testified that on June 28, 2011, he was informed by an unknown supervisor about a car (later identified as the

vehicle belonging to Respondent) with a vanity plate. Green went outside to look at the car. He observed the car parked "within a few blocks of the front of the precinct." He said he walked for about 30 seconds to a minute before he found the car.

Green testified that the vanity plate read [REDACTED] Green believed that this plate "said Bronx DA dick, and I believed it to be a disparaging remark towards the District Attorney in the Bronx." Green explained that he was concerned about this vanity plate because at the time, there was an investigation regarding the Bronx summons cases. Further, he said this investigation was "very well publicized. It was in the news daily, it was in the newspapers almost daily." Green was aware that Respondent was a subject in the Bronx summons investigation. Green explained that arrests in the 45 Precinct are handled by the Bronx County District Attorney (BDA).

Green stated that the unknown supervisor who told him about the vanity plate perceived the plate as "a mark directed at the Bronx District Attorney." After observing the vanity plate, Green returned to the precinct and either he, or someone else, conducted a computer check to determine whether the plate was registered before or after the Bronx summons investigation. Green learned that the plate had been recently registered, about a month ago (one month before June 28, 2011). Green conducted the computer check because if the vanity plate had been registered before the Bronx summons investigation, the vanity plate could have another meaning. Then he notified the Internal Affairs Bureau (IAB).

Green did not believe that he spoke to Respondent before he notified IAB, but did speak to Respondent after notifying IAB. Respondent asked to speak with him while Green was in his office. They briefly talked about the vanity plate. Green told Respondent



he was disappointed with him and that Respondent showed poor judgment. Respondent told Green "something to the effect of he changed it, or he was going to change it."

Respondent also told him that "he was sorry for bringing that situation to [Green] and to the precinct, and he was going to change it."

Green acknowledged that the vanity plate was on Respondent's private vehicle, and that before this vehicle was brought to his attention, he would not have known that it belonged to Respondent. Green agreed that the supervisor who brought this vehicle to Green's attention knew the vehicle belonged to Respondent.

On cross-examination, Green agreed that he never had problems with Respondent. He also agreed that members of the 45 Precinct and most officers assigned to Patrol Borough Bronx had a low view of the BDA. Green further agreed that the BDA was more inclined to dismiss cases and disbelieve police officers than District Attorneys in other boroughs. Green did not know whether Respondent ever asked to bad mouth the BDA during roll call.

Green agreed that he did not receive any complaints about the vanity plate from residents in the 45 Precinct. If Respondent had a bumper sticker on his car which said to overthrow President Obama, Green would not find the bumper sticker disparaging to an elected official. If Respondent had a bumper sticker on his car which depicted an AK-47 assault rifle and said "this is [for] my own protection," Green agreed that this bumper sticker would not be inappropriate.

Green explained that the content of the political statement would determine whether it was an inappropriate statement. Green also explained that it would be up to an individual to determine whether a statement is offensive or political; it would also be determined on a

case-by-case basis. Green agreed that other than that one supervisor, no one else informed him about the vanity plate. Green did not follow-up with this incident and did not know whether Respondent actually changed his license plate.

Green acknowledged that Respondent upheld the standards that were expected of him as a police officer. Green said that Respondent was a positive influence in the community.

On redirect examination, Green agreed that no other officers in the 45 Precinct publicly displayed their discontent with the BDA.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### Respondent's Case

Respondent testified in his own behalf.

#### Respondent

Respondent pleaded guilty to Case No. 2011-6008 and testified in mitigation of the penalty.

Respondent is a 12-year member of the Department assigned to the 45 Precinct. During his tenure with the Department, Respondent has made about 150 arrests and issued about 2,000 summonses. Respondent testified that between May 14, 2010 and July 4, 2010, 45 Precinct union delegate O'Reilly approached and "I don't really remember the

specifics but I think he - - he asked me to help him take care of a summons.” Respondent understood that “take care” of a summons meant that he should prevent the adjudication of the summons. Respondent said that he probably gave the summons to O’Reilly, but he did not recall the particulars of the conversation.

Respondent was interviewed by IAB and Respondent admitted that he had prevented the adjudication of the summons. Respondent also admitted to IAB that he had prevented the adjudication of one other summons during the same time frame. Respondent did not recall the steps he took to prevent the adjudication of the summons, but stated that he did this because “[i]t was what we were taught by the union bosses and it was a common accepted practice.” Respondent agreed that he was not instructed at roll call to handle summonses in this way. Respondent further agreed that between 2002 and 2010, he was given training concerning the use of discretion and preventing the adjudication of summonses; he said he was to use this discretion “whenever possible.” Respondent explained that his understanding of the use of discretion entailed to do “what ever you had to do,” when in the process of writing the summons or after the summons has been written.

Respondent admitted that he believed he used his discretion when he removed the summons from the processing system after it had been written; he acknowledged that he had never been instructed that this was improper. Respondent agreed that he was later instructed by IAB about this issue.

Respondent was aware that in June, 2011, the BDA was investigating a summons scandal. Respondent learned about this investigation from his Department interview with IAB. Respondent also learned about the investigation from watching the news. In June, 2011, Respondent explained that he had Department of Motor Vehicles (DMV) issued

license plates. Also in June, 2011, probably in early June, 2011, Respondent applied for vanity plate number [REDACTED] which was then approved by the DMV.

Respondent narrated that before June 28, 2011, he openly drove his car with the vanity plate affixed to it. He was residing in [REDACTED] at the time. When Respondent worked at the 45 Precinct, he used to park a "couple [of] blocks away" from the precinct. Respondent maintained that there was no information on his vehicle that would indicate that the owner was a police officer. Respondent was not using a Department parking permit at the time and had not had one in four years.

Respondent testified that on June 28, 2011, his captain approached him and told him that "he couldn't order me to take the plate off because it's my private vehicle but he would appreciate it if I took it off." Respondent told his captain that he will take the plate off and "a couple [of] days later," Respondent followed through. Respondent stated that he did not protest the captain's request to remove the vanity license plate. Respondent averred that during time he had the vanity plate, no complaint was filed against him. Moreover, Respondent said that he never went to the BDA's Office in his personal vehicle affixed with the vanity plate.

On cross-examination, Respondent stated that he was once a summons officer. Respondent agreed that he was aware of how to process a summons after he had written it. He said that after he wrote a summons he placed it into a box and did not know what happened after that. Respondent agreed that he was not told to destroy the summons after he had written it. Respondent agreed that he took steps to prevent the processing of two summonses.



Respondent spoke with a DMV employee about registering his vanity plate. Respondent believed that he told the DMV employee that the vanity plate he was requesting delineated that the BDA was a "dick." Respondent agreed that he told Department investigators that he registered his vanity plate because he felt the BDA was persecuting him because of his involvement with the ticket fixing investigation. Respondent agreed that his vanity plate was his way of expressing his dissatisfaction with the BDA.

Respondent agreed that he regularly drove his vehicle to work and parked about "three or four blocks away" from the 45 Precinct. Respondent averred that he used an RMP to travel to his court assignments.

Respondent agreed that members of the public complained to him about the BDA, but he did not recall whether members of the public complained to him within the time frame he sought the vanity plate in May 2011.

On redirect examination, Respondent agreed that he did not talk about or promote his vanity license plate while he was in uniform.

### FINDINGS AND ANALYSIS

#### Disciplinary Case No. 2011-6109

Respondent is charged with on June 28, 2011 installing and displaying on his private vehicle license plates which read, [REDACTED] and therefore engaged in conduct prejudicial to the good order, efficiency or discipline of the Department.

Respondent's license plate came to the attention of the Bronx precinct on June 28, 2011, when a supervisor in the Department notified Deputy Inspector Russell Green, the



Commanding Officer in Respondent's precinct. Green found the car with the license plate within a few blocks of the precinct. Green believed that the letters on the plate meant "Bronx DA dick" and that this was "a disparaging remark towards the District Attorney in the Bronx." Green was particularly concerned because of the then current and well publicized Bronx summons investigation. Green admonished Respondent and told him to remove the plate. Respondent apologized and complied.

There is no dispute that Respondent did order from the Department of Motor Vehicles and then install on his car a license plate that read, [REDACTED] Respondent admitted that he did this because he was dissatisfied with the District Attorney's Office for their treatment of him. He felt that the DA's Office was unfair to him in its summons investigation and unfair to the police by dismissing cases that his precinct regularly brought.

Respondent argued that he had a right under the First Amendment to display this license plate as a private citizen, while he was off-duty.

Respondent's attorney argued that Respondent placed this license plate on his personal vehicle as a private citizen, not in his capacity as a police officer or for any police activity. He clearly delineated between his position as a police officer and his position as a citizen by not placing a police placard in the window and by not parking on police property. He parked his car three or four blocks from the precinct to disassociate his car and himself from the Department. Respondent did not drive to the Bronx District Attorney's Office in his own car. He also lived [REDACTED] so his connection to the Department was even more attenuated.

Respondent maintained that historically there had been problems with the Bronx DA's Office not being friendly to citizens and police about investigations and dismissing cases for no reason. Thus Respondent was making a political statement as well as expressing a personal belief.

Respondent also argued that the Department of Motor Vehicles, a government agency, approved the vanity plate. The DMV does not allow any plates issued that are sexist or racist in nature. Respondent was not inciting violence by his statement. No citizen complained.

Finally, Respondent emphasized, when directed to remove the license plate from his car, Respondent complied.

The Advocate argued that an employee of the Department displaying such a derogatory statement about the District Attorney's Office was prejudicial to the good order, efficiency and discipline of the Department and was not protected by the First Amendment.

The application of the First Amendment to government employees who speak on matters of public concern has been addressed by the Supreme Court in *Pickering v. Board of Education*, 391 U.S. 563 (1968). Under the *Pickering* standard, the interests of the employee "in commenting upon matters of public concern" must be balanced with "the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.* at 568.

The first part of this balancing test is to determine whether the speech involves a matter of public concern. Respondent was clear that he chose to order this vanity plate to express his own feelings of being upset with and persecuted by the District Attorney's Office as well as frustration with the failure of the Bronx DA's Office to prosecute many of

his precinct's arrests. If there were any complaints by members of the public about these issues, they were not the motivation for Respondent's expression. The statement made in the vanity plate was not an explanation why the Bronx DA's practices were against the public interest, but a personal feeling expressed toward that office.

Even if, as the Department Advocate argued, the vanity plate was deemed a matter of public concern, it still would not pass the second part of the *Pickering* balancing test. This test is to determine whether the expression of the employee's speech interferes with the orderly administration of the government employer. Such interference can be established by whether the employee's speech is "directed towards any person with whom [the employee] would normally be in contact in the course of his daily work." *Id.* at 569 - 570. Here, Respondent was directing a derogatory statement toward the agency with which he and his agency collaborates and is contrary to the public service provided by the Department.

This Court notes that law enforcement works hand in hand with the prosecution. Specifically, all Bronx commands, including the 45<sup>th</sup> Precinct where Respondent was assigned, take reports and investigate crimes, gather and protect evidence, arrest suspects and provide testimony for the Bronx District Attorney to prosecute their cases. Also, this plate was displayed during the height of the Bronx summons ticket scandal. At that time, the Department was cooperating with the Bronx District Attorney's Office to uncover a wide scale and longstanding practice of corruption within the Department itself. Displayed publicly as it was within a few block of the precinct, any citizen in the precinct could easily have recognized Respondent in civilian attire as a member of the service walking on the



street back to his car or driving. In the midst of this highly publicized investigation, Respondent's statement reflected poorly on the precinct and Department.

Therefore, Respondent is found Guilty of Disciplinary Case No. 2011-6109.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2002. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

#### Disciplinary Case No. 2011-6008

Specification No. 1 alleges that between May 14, 2010 through July 4, 2010, Respondent on multiple occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of multiple summonses issued to various individuals.

Respondent pled guilty to Specification No. 1 and argued in mitigation that he did not ask for a favor for himself or for one of his friends or relatives, that this was the common practice during this time, and he used his discretion as officers believe that they can do. He also argued that he had a good record with the Department.

Respondent acknowledged that the Department had evidence that Respondent had helped to prevent the processing of a summons in one instance. But besides that one instance, the Department had no evidence of its own that Respondent had helped to prevent the processing of any other summonses. Respondent did not have to make an admission

that he did and should not be punished for telling the truth during his Department interview.

As the Department argued, Respondent's guilty plea and admission speaks for itself. The only discretion regarding summonses that police officers have is whether or not to issue the summons. After the ticket is issued, officers no longer have discretion and must follow certain procedures. That Respondent was not helping a friend or relative rather than someone he knew, that this practice of preventing processing of summonses was common, and Respondent's record of service are not factors this Court can consider as mitigation. Based on precedence and the penalty imposed on other members of the service similarly situated who also were forthcoming in their admissions, it is recommended that the same penalty of 5 suspension days, plus 25 vacation days, with 1 year dismissal probation be imposed.

#### Disciplinary Case No. 2011-6109

The Advocate recommended an additional penalty of five vacation days for Case No. 2011-6109 to be combined with its recommendation for Case No. 2011-6008 for a total of 5 suspension days, plus 30 vacation days, with 1 year dismissal probation. This Court notes that although there was potential for a civilian to see this plate and understand its message, there was no evidence that a civilian did so or ever complained to the Department about it. When his superior confronted Respondent about the impropriety of the plate, Respondent apologized and removed the plate.

This decision serves as a warn and admonish to Respondent for displaying the vanity plate. The standard recommended penalty for cases involving interference with

more than one summons for Case No. 2011-6008 covers the misconduct for Case No. 2011-6109 [See Case No. 6848/12 (March 26, 2014) in which the standard penalty for cases with more than one summons in one specification covered the penalty for a second specification.]

Accordingly, it is recommended that Respondent forfeit 25 vacation days, five suspension days, and that Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,

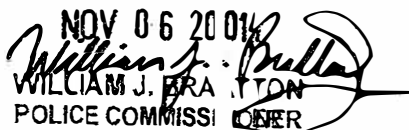
Amy J. Porter

by 

Amy J. Porter

Assistant Deputy Commissioner – Trials

**APPROVED**

NOV 06 2014  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER FRANK BONACCI  
TAX REGISTRY NO. 929747  
DISCIPLINARY CASE NOS. 2011-6008 & 2011-6109

For his last two annual performance evaluations, Respondent received an overall rating of 3.5 "Highly Competent/Competent." He was rated 4.0 "Highly Competent" in 2011. [REDACTED]  
[REDACTED]

For your consideration.

Amy J. Porter  
by [Signature]

Amy J. Porter  
Assistant Deputy Commissioner – Trials